IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7220 OF 2007

Shri Devisprasad Thakurprasad Shukla : Petitioner
(Orig.Defendant)

V/s.

Shri Shivaji Narhari Kavade : Respondent
(Orig.Plaintiff)

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Mr.P.J.Pawar for the petitioner.

Mr.Mandar Limaye for the respondent.

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CORAM : S.A.BOBDE, J.

DATE : OCTOBER 04, 2007.

P.C.

1. Rule, returnable forthwith.

Mr.Limaye waives service.

Heard by consent.

2. The petitioner has challenged the order refusing to condone the delay of 127 days in filing the appeal against the ex parte decree. Mr.Pawar, the learned counsel for the petitioner, points out that the trial Court ought not to have treated the petitioner as served at the address given by the respondent where clearly from the Bailiff's report, the person residing was one A.K.Pande and not the

petitioner. This is apparent from para. 6 of the judgement. From these circumstances, it is difficult to uphold the finding of the Court that the petitioner had notice of the proceedings. Nothing to the contrary is apparent from the record.

3. The impugned order is, therefore, set aside. The application for condonation of delay is hereby allowed. The matter is remanded to the lower appellate Court. The lower appellate Court shall hear and decide the petitioner’s appeal, in accordance with law, without being influenced by this order. The lower appellate Court is directed to decide the matter not later than six months from the date the parties appear before it. The parties are directed to appear before the lower appellate Court on 22.10.2007. There shall be interim stay of the execution of the decree till 23.10.2007.

4. The rule is made absolute in the aforesaid terms.

S.A. BOBDE, J.